



19 April 2013

(13-2074)

Page: 1/8

**Committee on Anti-Dumping Practices**  
**Committee on Subsidies and Countervailing Measures**

Original: English

**NOTIFICATION OF LAWS AND REGULATIONS  
UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS**

AUSTRALIA

*Supplement*

The following communication, dated 17 April 2013, is being circulated at the request of the Delegation of Australia.

---

Pursuant to Article 18.5 of the WTO Anti-Dumping Agreement and Article 32.6 of the WTO Agreement on Subsidies and Countervailing Measures, please find attached the *Customs Amendment (Anti-Dumping Commission) Act 2013*. This legislation received Royal Assent on 30 March 2013.

The Anti-Dumping Commission will start operating on 1 July 2013 and will be predominantly based in Melbourne. The Anti-Dumping Commission will be responsible for the administration of Australia's anti-dumping and countervailing system. This function is currently undertaken by the International Trade Remedies Branch within Customs and Border Protection (Customs and Border Protection). The Commission will be established within Customs and Border Protection to preserve operational links when implementing anti-dumping measures and monitoring compliance with these measures.

The Anti-Dumping Commission will be headed by a statutory Commissioner who will report to the Minister for Home Affairs on anti-dumping and countervailing decisions and to the Chief Executive Officer (CEO) of Customs and Border Protection in relation to financial, recruitment and other administrative matters. The Commissioner will be responsible for the decision-making and anti-dumping related matters that currently rest with the CEO of Customs and Border Protection.

**Customs Amendment (Anti-Dumping Commission) Act 2013**

**No. 32, 2013**

**An Act to amend the law relating to customs, and for related purposes**

[Assented to 30 March 2013]

The Parliament of Australia enacts:

**1 Short title**

This Act may be cited as the *Customs Amendment (Anti-Dumping Commission) Act 2013*.

**2 Commencement**

This Act commences on 1 July 2013.

**3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendments**

### **Part 1—Main amendments**

#### ***Customs Act 1901***

##### **1 Subsection 4(1) (definition of *Commissioner*)**

Repeal the definition, substitute:

***Commissioner*** means the Commissioner of the Anti-Dumping Commission established under section 269SMB.

##### **2 After subsection 9(3)**

Insert:

(3A) The Minister may, by signed instrument, delegate to the Commissioner any of the functions and powers of the Minister under Part XVB.

##### **3 Subsection 9(4)**

Omit "Despite subsection (1)", substitute "Despite subsections (1) and (3A)".

##### **4 Paragraph 30(1)(d)**

Omit "Commissioner's", substitute "Commissioner of Taxation's".

##### **5 Paragraph 42(1B)(a)**

Omit "CEO", substitute "Commissioner".

##### **6 Subsection 114D(2)**

Omit "Commissioner's", substitute "Commissioner of Taxation's".

##### **7 After subsection 269SM(2)**

Insert:

(2A) Division 1A deals with the establishment of the Anti-Dumping Commission and the Commissioner.

##### **8 Before Division 1 of Part XVB**

Insert:

### **Division 1A—Anti-Dumping Commission and Commissioner**

#### **Subdivision A—Preliminary**

##### **269SMA What this Division is about**

- This Division establishes the Anti-Dumping Commission within the Australian Customs and Border Protection Service.
- There is to be a Commissioner of the Anti-Dumping Commission. The Commissioner has functions and powers under this Part.
- The Commissioner is to be assisted by staff of the Australian Customs and Border Protection Service.

## **Subdivision B—Anti-Dumping Commission**

### **269SMB Establishment**

There is to be an Anti-Dumping Commission within the Australian Customs and Border Protection Service.

### **269SMC Constitution of the Anti-Dumping Commission**

The Anti-Dumping Commission consists of:

- (a) the Commissioner; and
- (b) the staff assisting the Commissioner as mentioned in subsection 269SMQ(1).

### **269SMD Function of the Anti-Dumping Commission**

The Anti-Dumping Commission's function is to assist the Commissioner in the performance of his or her functions or the exercise of his or her powers.

### **269SME Anti-Dumping Commission has privileges and immunities of the Crown**

The Anti-Dumping Commission has the privileges and immunities of the Crown in right of the Commonwealth.

## **Subdivision C—Commissioner**

### **269SMF Establishment**

- (1) There is to be a Commissioner of the Anti-Dumping Commission.
- (2) The Commissioner has the powers and functions conferred or imposed on him or her by this Act or any other law.

### **269SMG Powers of Commissioner**

The Commissioner has the power to do all things necessary or convenient to be done for or in connection with the performance of his or her functions.

### **269SMH Appointment**

- (1) The Commissioner is to be appointed by the Minister by written instrument.
- (2) The Commissioner may be appointed on a full-time or part-time basis.

### **269SMI Term of appointment**

The Commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: The Commissioner may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

### **269SMJ Acting Commissioner**

The Minister may appoint an individual to act as the Commissioner:

- (a) during a vacancy in the office of the Commissioner (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Commissioner is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: Sections 33AB and 33A of the *Acts Interpretation Act 1901* have rules that apply to acting appointments.

**269SMK Terms and conditions of appointment**

- (1) The Commissioner holds office on such terms and conditions as are determined in writing by the Minister.
- (2) The office of Commissioner is not a public office for the purposes of Part II of the *Remuneration Tribunal Act 1973*.

**269SML Disclosure of interests to the Minister**

The Commissioner must give written notice to the Minister of all interests, pecuniary or otherwise, that the Commissioner has or acquires and that conflict or could conflict with the proper performance of the Commissioner's functions.

**269SMM Outside employment**

*Full-time Commissioner*

- (1) If the Commissioner is appointed on a full-time basis, he or she must not engage in paid employment outside the duties of his or her office without the Minister's approval.

*Part-time Commissioner*

- (2) If the Commissioner is appointed on a part-time basis, he or she must not engage in any paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of his or her duties.

**269SMN Resignation**

- (1) The Commissioner may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

**269SMO Termination of appointment**

- (1) The Minister may terminate the appointment of the Commissioner:
  - (a) for misbehaviour; or
  - (b) if the Commissioner is unable to perform the duties of his or her office because of physical or mental incapacity.
- (2) The Minister may terminate the appointment of the Commissioner if:
  - (a) the Commissioner:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (b) the Commissioner is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (c) the Commissioner fails, without reasonable excuse, to comply with section 269SML; or
  - (d) the Commissioner is appointed on a full-time basis and engages, except with the Minister's approval, in paid employment outside the duties of his or her office (see subsection 269SMM(1)); or

- (e) the Commissioner is appointed on a part-time basis and engages in paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of his or her duties (see subsection 269SMM(2)).

**269SMP Delegation**

- (1) The Commissioner may, by writing, delegate any of the Commissioner's functions or powers to an officer of Customs.
- (2) In performing functions or exercising powers under a delegation, the delegate must comply with any written directions of the Commissioner.

**Subdivision D—Staff assisting the Commissioner**

**269SMQ Staff**

- (1) The staff assisting the Commissioner are to be staff referred to in section 15 of the *Customs Administration Act 1985* and made available for the purpose by the CEO.
- (2) When performing services for the Commissioner under this section, a person is subject to the directions of the Commissioner.

Note: Subsection 4(2) of the *Customs Administration Act 1985* provides that the CEO, under the Minister, controls the Australian Customs and Border Protection Service.

**9 Division 1 of Part XVB (heading)**

Repeal the heading, substitute:

**Division 1—Definitions and role of Minister**

**10 Part XVB**

Omit "CEO" (wherever occurring), substitute "Commissioner".

**11 Part XVB**

Omit "CEO's" (wherever occurring), substitute "Commissioner's".

**12 Part XVB**

Omit "CEO" (wherever occurring), substitute "**Commissioner**".

**13 Part XVB**

Omit "CEO's" (wherever occurring), substitute "**Commissioner's**".

**14 Part XVB**

Omit "CEO" (wherever occurring), substitute "*Commissioner*".

Customs Administration Act 1985

**15 Section 3**

Insert:

**Commissioner** means the Commissioner of the Anti-Dumping Commission established under section 269SMB of the *Customs Act 1901*.

**16 Subsection 4(3)**

After "CEO", insert ", the Commissioner".

**17 Subsection 4(4)**

After "under a law of customs", insert "(other than Part XVB of the *Customs Act 1901*)".

**18 After subsection 14(4)**

Insert:

(4A) The CEO may, by signed instrument, delegate to the Commissioner any of the powers of the CEO under section 16, to the extent that those powers apply in connection with Part XVB of the *Customs Act 1901*.

**19 After paragraph 16(1AA)(a)**

Insert:

(aa) the Commissioner; and

**Part 2—Other amendments**

*Criminal Code Act 1995*

**20 Section 146.1 of the *Criminal Code* (after paragraph (d) of the definition of *Commonwealth law enforcement officer*)**

Insert:

(da) the Commissioner of the Anti-Dumping Commission established under section 269SMB of the *Customs Act 1901*; or

*Law Enforcement Integrity Commissioner Act 2006*

**21 After paragraph 10(2A)(a)**

Insert:

(aa) the Commissioner of the Anti-Dumping Commission established under section 269SMB of the *Customs Act 1901*;

### **Part 3—Transitional provisions**

#### **22 Transitional—things done by, or in relation to, the CEO**

- (1) A thing done by, or in relation to, the CEO under Part XVB of the *Customs Act 1901* before the commencement of this item has effect, after that commencement, as if it had been done by, or in relation to, the Commissioner under that Part.
- (2) The Minister may, by writing, determine that subitem (1) does not apply in relation to a specified thing.
- (3) A determination made under subitem (2) is not a legislative instrument.

#### **23 Transitional—legal proceedings involving the CEO**

- (1) This item applies if:
  - (a) any proceedings to which the CEO was a party were pending in any court or tribunal immediately before the commencement of this item; and
  - (b) the proceedings relate to the operation of Part XVB of the *Customs Act 1901*.
- (2) The Commissioner is substituted for the CEO, from the commencement of this item, as a party to the proceedings.

#### **24 Transitional regulations**

The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments made by this Schedule.

---